

**R E S O L U T I O N**

Resolution E-3828. SOUTHERN CALIFORNIA EDISON COMPANY REQUEST FOR APPROVAL OF A MASTER DEFINITIVE AGREEMENT AMONG SOUTHERN CALIFORNIA EDISON COMPANY, ENRON WIND LLC, ESI SKY RIVER LIMITED PARTNERSHIP, ESI VG LIMITED PARTNERSHIP, ET AL. AND RELATED AMENDMENTS TO POWER PURCHASE AGREEMENTS BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND CERTAIN SMALL POWER PRODUCTION FACILITIES (QFID NOS. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112).

By Advice Letter 1686-E, filed on February 14, 2003.

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**SUMMARY**

Southern California Edison requests a final and non-appealable Commission order approving its settlement containing a Master Definitive Agreement (MDA) with Enron, FPL and PPA Sellers and nineteen related Purchased Power Amendments (PPAs) with certain small power production companies (QFs) before June 14, 2003. This resolution approves the MDA and PPA amendments as reasonable. This resolution also provides that payments made for purchased power under the contract amendments are fully recoverable under SCE's retail rates, subject to Commission review of the reasonableness of SCE's PPA administration.

**BACKGROUND**

Southern California Edison (SCE) filed Advice Letter (AL) 1686-E, a Master Definitive Agreement among Southern California Edison Company, Enron Wind LLC (Enron), ESI Sky River Partnership and ESI VG Limited Partnership (FPL), and Power Purchase Agreement Sellers (PPA Sellers) dated January 15, 2003 (the "MDA"), and nineteen (19) related amendments to power purchase agreements ("PPAs") for certain wind technology small power production facilities (QFs) (QF ID Nos. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067, 6102, 6103, 6104, 6105,

6106, 6107, 6108, 6111 & 6112) ("PPA Amendments"). The MDA and the PPAs form a settlement among the parties and, together, are presented to the Commission for approval. Approvals have also been requested of the Federal Energy Regulatory Commission (FERC) and the United States Bankruptcy Court. The United States Bankruptcy Court approved the MDA and the PPA on March 6, 2003, while its request at the FERC is still pending.

Advice Letter 1686-E was filed on February 14, 2003 as a Restructuring Advice Letter Filing (RALF), a procedure adopted under Decision (D.) 98-12-066 to expedite approval of modifications to contracts with qualifying cogeneration or small power production facilities (QFs), so long as any such filing has the advance approval of the Office of Ratepayer Advocates (ORA). A public version and a confidential version of the filing were submitted to the Energy Division. Under the advice letter, Attachment 1, Index of Attachments is not redacted, but Attachments 2-6 are redacted. The redacted attachments contain the MDA, the PPA amendments, a supportive letter from ORA, a description and analysis of the agreements, legal issues and matters of dispute, and QF-specific details concerning each affected purchased power seller.

Under the advice letter, SCE requests the Commission to:

- (1) Approve the MDA as reasonable in all respects;
- (2) Find that the PPA Amendments entered into concurrently with and pursuant to the MDA are likewise reasonable in all respects; and
- (3) Provide that all payments made pursuant to the MDA and the PPA Amendments are fully recoverable in SCE's retail rates subject only to review by the Commission with respect to the reasonableness of SCE's administration of the PPAs, as amended.

Lastly, SCE requests a final and non-appealable CPUC order approving the MDA and PPA Amendments as reasonable no later than June 14, 2003. The effectiveness of the MDA is conditioned on the Commission issuing a final order that has become non-appealable, meaning that the 30-day period for filing an application for

rehearing from the Commission has elapsed without such an application having been filed.<sup>1</sup>

## **NOTICE**

Notice of AL 1686-E was made by publication in the Commission's Daily Calendar. SCE also served public copies of the advice letter to interested parties according to Section III Paragraph G, of General Order 96-A. SCE did not serve copies of the advice letter on parties to the restructuring advice letter service list as required by D.98-12-066, since the Commission closed the restructuring dockets under D.03-01-034 on January 16, 2003.

## **PROTESTS**

No protests to AL 1686-E were filed.

## **DISCUSSION**

Under AL 1686-E, pursuant to D.98-12-066, SCE seeks Commission approval of the MDA and PPA Amendments as reasonable. SCE advises that the Commission's approval of the MDA and the related PPA Amendments, and the contract restructurings provided will:

- Result in substantial ratepayer savings when compared to the *status quo*.
- Facilitate the resolution of several ongoing disputes among the parties that have been raised in a number of forums, including the SEC, the FERC, the United States Bankruptcy Court and the Los Angeles Superior Court. These disputes generally concern the issue of whether the subject wind energy projects, all of which are owned in whole or in part by affiliates of Enron Corp., have maintained their status as qualifying facilities ("QFs") in selling their output to SCE under the PPAs.

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<sup>1</sup> Filing of a timely application for rehearing is a jurisdictional requirement for further review of Commission decisions in the courts. Pub. Util. Code Section 1731(b).

- Remove substantial uncertainty concerning the viability of the projects themselves, thereby helping to sustain the existing renewable energy base in the state.
- Leave intact potential claims against Enron and others that are not directly related to the QF ownership issues resolved in the MDA, such as potential claims for manipulation of the natural gas and electricity markets.

SCE seeks a final and non-appealable Order, Decision or Resolution of the Commission approving the reasonableness of the MDA and the related PPA Amendments as soon as possible, but in any event, no later than June 14, 2003 (which date makes allowance for the 30 day period for applications for rehearing).

As defined in the MDA, the PPA Sellers under the PPAs and the PPA Amendments are:

Cabazon Power Partners LLC,  
Enron Wind Systems, LLC,  
Zond Wind Systems Partners Ltd., Series 85-A,  
Zond Wind Systems Partners Ltd., Series 85-B,  
Sky River Partnership,  
Victory Garden Phase IV Partnership,  
ZWHC LLC, and  
Painted Hills Wind Developers.

Each PPA Seller is a party to a PPA with SCE that provides for the sale of electric energy and capacity to SCE from wind-powered electric generating projects. Each PPA Seller and the wind energy project facility (as identified above by QF ID number) producing power under the related PPA are referred to jointly as a "Project" and, collectively, with the Projects associated with the other PPA Sellers as the "Projects."

Enron Wind LLC is an affiliate of Enron Corp. and is referred to as "Enron." ESI Sky River Partnership and ESI VG Partnership are affiliates of FPL Energy and are referred to collectively, as "FPL." FPL and/or Enron, directly or indirectly, through their respective affiliates, have an interest in each of the Projects.

SCE's power purchases from the Projects are made in accordance with the terms and conditions of the PPAs, which were entered into under the mandatory purchase requirements of the Public Utility Regulatory Policies Act of 1978 ("PURPA"),

FERC's regulations implementing PURPA (18 C.F.R. § 292.101 *et seq.* (2002)), and decisions and orders of the Commission implementing PURPA in California.

SCE states that the PPAs account for approximately 252 MW of installed electric wind generating capacity. The PPAs are based on Commission-approved Standard Offer contracts and all provide for 30-year terms. Entered into between June 22, 1984 and April 16, 1985, the PPAs will expire during the years 2014 through 2021. Energy deliveries by the Projects during 2002 collectively totaled approximately 575 GWh, representing about 26% of total energy deliveries from facilities employing wind technology under contract with SCE and about 5% percent of total deliveries to SCE during that period from all renewable resources. Pertinent details concerning each Project were provided under a confidential attachment.

Energy Division has reviewed the attachments and concurs with ORA's description of the ratepayer benefits achieved by the MDA and related PPA Amendments as "clearly substantial" and "major economic concessions." (Confidential Attachment 4, at 2). According to SCE, the MDA and related PPA Amendments represent the single largest instance of ratepayer benefit achieved through a one-time price adjustment to small power production facility contracts that SCE has ever presented to the Commission for approval.

SCE advises that in addition to securing substantial economic benefits for ratepayers, the Commission's issuance of a resolution approving the MDA and related PPA Amendments will promote certainty in the contractual relationships between SCE and the PPA Sellers. SCE states that over the last two years, SCE and the PPA Sellers have been parties to litigation and regulatory proceedings in the Superior Court, the United States Bankruptcy Court, the SEC and FERC concerning, among other things, whether the Projects are in compliance with the ownership restrictions of the Public Utility Regulatory Policies Act of 1978 ("PURPA") as set forth in FERC's implementing regulations. *See*, 18 C.F.R. § 292.206.

The MDA and PPA Amendments provide that, in consideration of the economic benefits described above, SCE will release claims based on the Projects' asserted failure to comply with ownership restrictions for small power production facilities under PURPA and will waive certain requirements with respect to the projects going forward. For all other purposes, however, SCE states that it will continue to treat the Projects as wind generation qualifying facilities ("QFs") within the meaning of PURPA, and the Projects and associated PPAs will continue to be administered in accordance with Commission decisions related to rates and other issues insofar as those decisions apply to QF projects generally.

SCE states that its release will allow the Projects to continue to operate at historic levels without the expense and distraction of ongoing litigation, regulatory proceedings, and litigation matters. In this regard, SCE asserts that the MDA and PPA Amendments are consistent with State policies and legislation encouraging the maintenance and development of renewable resources such as the Projects. SCE cites ORA's description, which says "[i]n evaluating the settlement outcome . . . , weight [should be given] to the continuity of operations of these renewable resources." (Confidential Attachment 4, at 2.) SCE's release does not extend to claims beyond those specifically identified in the release provisions of the MDA, such as claims against Enron and its affiliates for manipulation of the electricity and natural gas markets.

SCE advises that the effectiveness of the waiver and release provisions of the MDA, like the economic terms, is conditioned on regulatory and bankruptcy court approvals, including timely Commission approval, as provided in the MDA, being obtained or waived. Commission approval must occur on or before June 14, 2003 (to allow for the 30-day period to seek rehearing to expire) in order for certain terms of the MDA to become effective.

To comply with D.98-12-066, *mimeo*, Attachment B ¶¶3a-3j, SCE provided true and correct copies of the MDA and PPA Amendments for each of the Projects. SCE states that Confidential Attachment 4 is a true and correct copy of a letter from the ORA to SCE dated February 10, 2003, as required by D.96-12-028, *mimeo*, at 22, Conclusion of Law 9. Also, SCE states that true and correct copies of the PPAs, related amendments, Renewable Agreements and amendments for each of the Projects, as required by D.98-12-066, *mimeo*, Attachment B, ¶3i, were provided in addition to the QF's identification, generating facility description, and historical operational performance characteristics as further required by D.98-12-066.

SCE also provided both a summary and detailed discussion of the material terms of the MDA and the PPA Amendments, the relevant factual background pertaining to the Projects, a discussion of the procedural history and status of various litigation and regulatory proceedings arising from disputes among SCE, Enron, FPL, and the PPA Sellers concerning the Projects, and an assessment of the ratepayer benefits associated with the MDA and PPA Amendments. Energy Division has reviewed SCE's AL submittal and finds that SCE has complied with the RALF procedure's filing requirements.

Pursuant to the procedure established in D.98-12-066, SCE sought and obtained a statement of support or neutrality from the ORA. In response to this request, ORA provided a letter to SCE dated February 10, 2003, which states, in pertinent part, that, "ORA has determined that this settlement provides past, present and future rate reductions relative to the status quo. ORA does not oppose this filing being processed in the most expeditious manner as a RALF."

D.98-12-066, Attachment B, ¶4a-h provides that the publicly available version of a RALF may be redacted to delete certain types of information. Further, the MDA and the PPA Amendments require that the parties thereto seek confidentiality treatment with respect to filings seeking regulatory approval of those agreements. Therefore, SCE submitted for filing both public and non-public versions of the RALF and related attachments and appendices. In the public version of the RALF, portions of Confidential Attachments 2, 3A-3S, 4, 5 and 6A-6S are redacted in their entirety. Pursuant to D.98-12-066, the RALF may be protested on one or more of the following grounds:

- a. SCE did not properly serve or give notice of the advice letter;
- b. The relief requested in the advice letter would violate statute or Commission order;
- c. The advice letter contained material errors, or it did not follow the Commission's approved methodology, if any; or
- d. The proposed restructuring is unjust, unreasonable, or discriminatory, provided, however, that the advice letter is not subject to protest on these grounds if such protest would require relitigating a prior order of the Commission.

Energy Division finds that SCE provided proper notice and service of the advice letter. In review of the MDA and PPAs, Energy Division notes that future payments for energy rates under the contract amendments for those QFs that signed a Commission-approved agreement subject to D.01-06-015, et al, shall be adjusted with payments to other renewable facilities, as approved by the Commission. In addition, the subject wind QFs may participate in future Commission proceedings. Energy Division recommends that the Commission find the proposed restructuring fair, reasonable, and non discriminatory. Energy Division believes that the relief requested in the advice letter does not violate statute or Commission orders and that the advice letter contained no material errors. The advice letter was not protested.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Sections 311(g)(2) and 311(g)(3) provide that this 30-day period may be reduced or waived under certain circumstances.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and was placed on the Commission's agenda no earlier than 30 days from the day it was mailed. Comments were filed by SCE on May 19, 2003 updating the status of pending approvals, and have been incorporated into this resolution.

## **FINDINGS**

1. SCE's Master Definitive Agreement and related amendments to power purchase agreements with the parties as filed in SCE's Advice Letter 1686-E on February 14, 2003 form a settlement presented for Commission approval under D.98-12-066.
2. The United States Bankruptcy Court has approved the MDA and PPA Amendments. A request for approval of the MDA and PPA Amendments is currently pending before FERC.
3. Decision 98-12-066 adopted a procedure named the Restructuring Advice Letter Filing to expedite approval of modifications to contracts with qualifying cogeneration or small power production facilities.
4. Approval of the settlement may facilitate resolution of several disputes concerning whether the subject wind energy projects have maintained their status as qualifying facilities in selling their electricity production to SCE under the PPAs.
5. Each PPA seller is a party to a PPA with SCE that provides for the sale of electric energy and capacity from wind-powered electric generating projects.
6. FPL and/or Enron, directly or indirectly, through their respective affiliates, have an interest in each PPA seller.
7. Each PPA seller has a QF agreement with SCE under PURPA and Commission-approved standard offers to provide power to SCE under 30-year terms.



8. The standard offers to each PPA seller will expire during the years 2014 through 2021.

9. The combined purchased power addressed under the PPAs represents approximately 252 MW of installed electric wind generating capacity.

10. Energy deliveries during 2002 from the PPA sellers totaled approximately 275 GWh, or about 26% of total energy deliveries from all contracts SCE has with wind facilities and about 5% of total energy deliveries from all renewable resources.

11. Ratepayer economic benefits resulting from approval of the MDA and PPAs are significant and in the public interest.

12. Upon approval of the MDA and PPAs, SCE will release claims based on the projects' asserted failure to comply with ownership restrictions for small power production facilities under PURPA and will waive certain requirements with respect to the projects going forward.

13. Except for the waiver of certain requirements with respect to the projects going forward (as provided in the MDA and PPA Amendments), SCE will continue to treat the projects as wind generation QFs within the meaning of PURPA, and the projects and associated PPAs will continue to be administered in accordance with Commission decisions related to rates and other issues insofar as those decisions apply to QF projects generally.

14. SCE's release of claims related to the PPAs does not extend to claims beyond those specifically identified in the release provisions of the MDA, such as claims against Enron and its affiliates for manipulation of the electricity and natural gas markets.

15. The effectiveness of the MDA waiver and release provisions and the economic terms is conditioned on regulatory and bankruptcy court timely approvals.

16. SCE's AL 1686-E complies with the RALF procedure filing requirements of D.98-12-066.

17. The Master Definitive Agreement among Southern California Edison, Enron Wind LLC, ESI Sky River Limited Partnership, ESI VG Limited Partnership, et al are reasonable in all respects.

18. The Power Purchase Agreements' related amendments pursuant to the Master Definitive Agreement between Southern California Edison and a certain 19 small power producers are reasonable in all respects.

19. SCE should be afforded full retail rate recovery of payments made pursuant to the Master Definitive Agreement and Power Purchase Agreements, as amended pursuant to the Master Definitive Agreement, subject to reasonableness review of the administration of the PPAs, as amended.

**THEREFORE IT IS ORDERED THAT:**

1. Southern California Edison's Advice Letter 1686-E containing a master Definitive Agreement Among SCE, Enron Wind LLC, ESI Sky River Limited Partnership, ESI VG Limited Partnership, et al, and related Amendments to Power Purchase Agreements Between SCE and Certain Small Power Production Facilities identified above by QF ID is approved.

2. Southern California Edison Company shall notify the Commission by letter when all approvals related to this settlement are obtained.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 22, 2003, the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director